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No. 92-1640

In The

Supreme Court of the United States

October Term, 1992

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, JOHN STURDIVANT, GLEN PETERSON, HARRY DAWSON, JERRY BLACK, ALEJANDRO GONZALES,

Petitioners,

v.

RAMIRO MARTINEZ,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITIONERS' PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the Court should deny Petitioners' Petition for Writ of Certiorari because the decision at bar involves a judgment remanding a case which does not bring into consideration important questions of law that are fundamental to the further conduct of the case or would otherwise qualify as a basis for Certiorari.

II. Whether the Court below properly found that the Labor-Management Reporting and Disclosure Act grants subject matter jurisdiction over Respondent's claims?

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Respondent, Ramiro Martinez, requests that the Court deny the Petitioners' Petition for Writ of Certiorari, and remand the case to Federal District Court to enforce the Fifth Circuit Court of Appeals' decision remanding the case for further proceedings.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-8a) is reported at 980 F.2d 2039. The opinion of the district court is set forth at App., *infra*, 9a-13a.

JURISDICTION

The judgment of the court of appeals was entered on January 12, 1993. A petition for a writ of certiorari was filed on April 12, 1993, within 90 days of the date of the entry of judgment below. The jurisdiction of this court was invoked by the Petitioners pursuant to 28 U.S.C. Section 1254(1).

STATUTES INVOLVED

1. 28 U.S.C. Section 1254(1). Courts of appeals; certiorari; certified questions

Cases in the courts of appeal may be reviewed by the Supreme Court by the following methods:

> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

2. Rule 10 of the RULES OF THE SUPREME COURT OF THE UNITED STATES.

3. The Labor-Management Reporting and Disclosure Act, 29 U.S.C. Section 401, *et seq.* (the "LMRDA") provides in relevant part:

> (i) "Labor organization" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

29 U.S.C. Section 402(i).

> No member of any labor organization may be fined, suspended, expelled, or otherwise disciplines . . . unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

29 U.S.C. Section 411(a)(5). 29 U.S.C. Section 412 states that

> [a]ny person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States. . . .

STATEMENT OF THE CASE

Respondent agrees with the statement of the case as set out in Sections I and II of the opinion of the Court of Appeals for the Fifth Circuit at 980 F.2d 2039 and attached as Appendix A, *infra*, 2a-5a.

Respondent adds only the following. On appeal the Fifth Circuit considered whether the Civil Service Reform Act of 1978's (the "CSRA") comprehensive remedial scheme applied to Respondent's cause of action. App., *infra*, 4a, fn.1. The Court found that "[t]he instant case deals with a situation where the two statutes, [the LMRDA and the CSRA], overlap because the American Federation of Government Employees (the "AFGE") admits members who are employed in both the public and the private sector". *Id.* The Court further found that the question before it was "whether the LMRDA provides [a remedy], [and] not whether the CSRA provides [Respondent] a remedy". App., *infra*, 5a, fn.2. Respondent's "membership in Local 1617, a purely private union, does not affect his rights under the LMRDA as a member of the AFGE". App, *infra*, 6a, fn.3. The issue is whether AFGE's status, **and not Local 1617's status,** as a "mixed union" permits the Respondent to maintain his actions in federal district court under the LMRDA. App., *infra*, 7a-8a. The Court remanded the case for further proceeding to determine AFGE's status. *Id.*

REASONS FOR DENYING THE PETITION

Summary of Arguments

Petitioners' Petition for a Writ of Certiorari should be denied for the following reasons:

1. This Court's jurisdiction should not be invoked because the Court of Appeals for the Fifth Circuit has not rendered a decision in conflict with the decision of another United States Court of Appeals on the same issue, nor has it decided a federal question in a way that conflicts with applicable decisions of this Court. The Court of Appeals for the Fifth Circuit simply analyzed the facts and the arguments, and came to the conclusion that an individual, under the appropriate circumstances, could assert a cause of action under the LMRDA. With respect to the case at bar, the court determined that more factual findings were needed in order to determine whether the plaintiff in the case at bar could assert a cause of action under the LMRDA.

2. The jurisdiction of this Court, if any, should be denied until proper findings of fact, which were ordered by the court below in its decision to remand the case, are ultimately determined. The decision of the Court of Appeals for the Fifth Circuit does not bring into consideration important questions of law that are fundamental to the further conduct of the case.

3. The court below was correct when it properly posited the issue as being – "[W]hether the LMRDA grants subject matter jurisdiction over Ramiro M. Martinez's claims". App., *infra*, 5a. The Court of Appeals for the Fifth Circuit was correct in recognizing that the

LMRDA does not preempt the CSRA. Under the proper facts and pleadings, such as the ones existing in the case at bar, a plaintiff may assert a legally cognizable cause of action under the LMRDA.

4. The stipulation made by the Petitioners that the AFGE represents non-governmental employees is sufficient to categorize it as a "labor organization" as the LMRDA defines the term. This stipulation subjects the Petitioners to the LMRDA, and thereby federal district court jurisdiction.

The LMRDA defines a "labor organization" as:

> "[any organization] in which employees participate and **which exists for the purpose,** in whole or in part, of dealing with employers . . . ". (Emphasis added.) 29 U.S.C. Section 402(i).

The key language under the rules of grammar and statutory construction are the words "which exists for the purpose", and not the words "dealing with employers". Actual representational actions are not needed to classify an organization as a "labor organization". Mere existence for the purpose of dealing with employers suffices.

Due to the aforementioned reasons the court should deny Petitioners' Petition for Writ for Certiorari.

Arguments

Petitioners attempted to invoke "[t]he jurisdiction of this court . . . under 28 U.S.C. section 1254(1)", (*Petition For a Writ of Certiorari*, p.2), however the case at bar does not involve a significant constitutional question or an issue of substantial public interest.

28 U.S.C. Section 1254(1) is the general jurisdictional statute for appeals to the United States Supreme Court by Writ of Certiorari. This statute must be read in conjunction with Rule 10 of the Rules of The Supreme Court of the United States. Rule 10 delineates some key factors which must be at issue before the Supreme Court will grant a petitioner's petition for writ of certiorari.

Rule 10 of the Rules of the Supreme Court of the United States states:

> Considerations Governing Review on Writ of Certiorari
>
> .1. A review on writ of certiorari is not a matter of right, but a judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:
>
> (a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.

> (c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

The case at bar does not involve any key factors which would call for this Court's grant of jurisdiction pursuant to a writ of certiorari. *See,* opinion of the Court of Appeals for the Fifth Circuit at App., *infra,* 1a-8a.

There are no conflicting opinions between the circuits or between the Fifth Circuit and this Court. No other court of appeals has considered the issue addressed by the Court Appeals for the Fifth Circuit, i.e. whether a plaintiff may choose to plead and pursue a cause of action under the LMRDA or the CSRA when the statutes overlap. Since this issue has not been addressed by any other court, Respondent believes it is incorrect for Petitioners to state that the Fifth Circuit's opinion is in conflict with other courts. The opinion of the Fifth Circuit does not directly address the issue raised by Petitioners. There is presently no important question of federal law which should be settled by this Court.

The Court of Appeals for the Fifth Circuit has remanded the case for further factual findings, it has not disposed of the case in any manner. The issue presently advanced by the Petitioners is not ripe for consideration by this Court. Petitioners' Petition for Writ of Certiorari is thus frivolous and should be denied, and damages should be assessed against Petitioners pursuant to Rule 42.2, Rules of the Supreme Court, and current case law.

Tatum v. Regents of University of Nebraska, 460 U.S. 1048, 103 S.Ct. 1450, 75 L.Ed.2d 804 (1983).

Petitioners' Petition for a Writ of Certiorari misstates the issue at hand. Petitioners focus the Court's attention on collateral issues which the Court of Appeals for the Fifth Circuit properly did not address.

Petitioners state, in their "Question Presented", that "the court below improperly departed from the rule established by this Court, and adopted by the overwhelming majority of circuit and state courts, that the Civil Service Reform Act provides the exclusive remedial scheme for federal employee claims arising under the Act". Petitioners contend that a writ of certiorari by this Court is mandated in order to clarify any inconsistencies among the courts. Petitioners' statement is incorrect for the court below never ruled that the CSRA did not provide the exclusive remedial scheme for federal employee **claims** arising under **the Act.** App., *infra*, 1a-8a.

The court below observed that this "case deals with a situation where the two statutes [the LMRDA and CSRA,] overlap and that the facts and plaintiff's pleading may assert a cause of action under the LMRDA depending on other factors." App., *infra*, 4a, fn.1.

The question presented by Petitioners fails to properly focus on the true issue presented in the case at bar. As the Court of Appeals for the Fifth Circuit correctly pointed out, "[t]he only question before us is whether the LMRDA grants subject matter jurisdiction over [Respondent] Ramiro M. Martinez's claim". App., *infra*, 5a. In other words, the court is asking: Do the facts and Respondent's pleadings allege a cause of action under the

LMRDA? Whether a cause of action would also lie pursuant to the CSRA is irrelevant. Respondent did not plead such a cause. The Plaintiff is the master of his claim. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392-393, ___ S.Ct. ___, ___ L.Ed.2d ___ (1987).

Two statutes addressing labor relations have been adopted by Congress. The Department of Labor has and continues to promulgate regulations pursuant to each statute. No statute nor judicial decision has ever, explicitly or implicitly, totally preempted the LMRDA or the pertinent provisions currently under consideration. The Department of Labor's promulgation of regulations pursuant to the LMRDA lead to the unmistakable conclusion that neither Congress or the Department of Labor believe nor intended for the LMRDA to be preempted by the CSRA. Although the district court relied on *Karahalios v. National Federation of Federal Employees*, 489 U.S. 527, 109 S.Ct. 1282, 103 L.Ed.2d 539 (1989) to dismiss Respondent's claim, the Court of Appeals for the Fifth Circuit correctly pointed out that *Karahalios* is distinguishable from the present case, and therefore reversed the decision of the district court. App., *infra*, 5a, fn.2. *Karahalios* stands for the proposition that courts should be reluctant to provide additional remedies where a statute expressly provides one. *Id.* As the Court of Appeals for the Fifth Circuit correctly pointed out, the issue in the case at bar is not whether CSRA provides a remedy or whether judicial incursion into the CSRA's remedial scheme is contemplated. Rather, the issue is whether the LMRDA provides a cause of action and a remedy for Respondent. *Id.*

The preemption argument raised by the Petitioners is groundless.

The question which the Court of Appeals for the Fifth Circuit was unable to resolve with the existing facts of the case is whether the Respondent may actually raise a claim pursuant to the LMRDA.

The Court of Appeals for the Fifth Circuit reviewed 29 U.S.C. Sections 412 and 411 respectively. It found that Respondent is a "person", and that he had rights secured by the LMRDA which he contended had been violated. App., *infra*, 5a-6a. The court below found that Respondent was a member of a union, the AFGE. It found that his LMRDA rights vis-a-vis the parent AFGE union, and not Local 1617, were the correct focus when deciding whether LMRDA causes of action could be invoked.

The question presented, i.e. whether the Respondent could state a cause of action under the LMRDA, turns on whether Respondent is a member of a "labor organization" as that term is defined under 29 U.S.C. Section 402(i). *Id.* In other words, "whether the AFGE or any of its locals" meet the definition of a "labor organization". App., *infra*, 6a-7a.

The court below determined that under the present facts of the case it was unable to find whether or not Petitioner AFGE was a "labor organization". Therefore, the court remanded the case for further factual findings. App., *infra*, 7a-8a. Specifically, the Court of Appeals for the Fifth Circuit would like the district court to determine whether "the AFGE, through any of its locals, deals with any private sector employers on behalf of its members concerning the terms and conditions of employment". App., *infra*, 7a. If it does, the AFGE is representing non-

governmental employees and is a "labor organization" as defined by the LMRDA. *Id.*

Respondent believes that the course of the proceedings ordered by the court below is appropriate, and that the evidence will show that the AFGE and/or its locals do represent non-governmental employees. The AFGE qualifies as a "labor organization". Respondent believes that this finding may currently be made due to the following reasons.

The LMRDA defines a "labor organization" as:

> [any organization] in which employees participate and **which exists for the purpose,** in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms and conditions of employment. (Emphasis added.) 29 U.S.C. Section 402(i).

The court below focused on the phrase "dealing with employers" as determinative of whether or not an organization which "represents" employees can be defined as a "labor organization". The court below ruled that for a union to be defined as a "labor organization" within the definition of the LMRDA it must "represent" non-governmental employees. App., *infra,* 6a-8a. This term is in turn defined by the actions of an organization in **actually** dealing with private sector employers on behalf of its members concerning the terms and conditions of their employment. App., *infra,* 6a-7a.

Respondent believes that the proper focus should be the phrase "which exists for the purpose".

Rules of grammar, the plain meaning rule, and rules of statutory construction lead to the logical conclusion that the phrase "which exists for the purpose" is the controlling clause. No actual representational actions are needed to classify an organization as a labor organization. Mere existence for the purpose of representation should suffice.

Alternatively, if the Court determines that the phrase "dealing with employers" is the key term, Respondent believes that the act of holding oneself out as a representative for another, such as the AFGE stipulation that it represents non-governmental employees, is a sufficient representational act, and thus brings AFGE within the definition of a "labor organization". The act of holding oneself out as a representative of another may deter others from entering into negotiations with the represented individual(s), and thus prevent others from actually entering into collective bargaining agreements.

Respondent therefore believes that the actions of the Petitioners bring the AFGE within the definition of a "labor organization". Respondent may assert a cause of action against Petitioners under the LMRDA.

CONCLUSION

For the foregoing reasons Respondent respectfully requests that the Court deny Petitioners' Petition for Writ of Certiorari. Respondent also requests that the Court award him just damages against the Petitioners

pursuant to Rule 42.2 and current case law due to Petitioners' improper and frivolous Petition For A Writ Of Certiorari.

Respectfully submitted,

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May 28, 1993

RESPONDENT'S APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 91-5615

RAMIRO M. MARTINEZ, Individually and as President of American Federation of Government Employees, Local 1617,
Plaintiff-Appellant,

v.

THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, *et al.*,
Defendants-Appellees,

and

ROBERT GUTTMAN, U.S. Dept. of Labor, ETC.,
Intervenor-Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas

Jan. 12, 1993

Before BRIGHT,* JOLLY, and BARKSDALE, Circuit Judges.

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* Senior Circuit Judge of the Eighth Circuit, sitting by designation.

E. GRADY JOLLY, Circuit Judge:

The sole question with which we are presented is whether the federal courts have subject matter jurisdiction over this dispute. Ramiro M. Martinez, a federal employee, and a member of the American Federation of Government Employees ("AFGE"), sued it under the Labor-Management Reporting and Disclosure Act ("LMRDA") because it had removed him from office in his local union. The LMRDA grants federal courts jurisdiction over disputes between a union and its members if the union is a "labor organization" as the LMRDA defines the term. Unions that bargain solely with the government are not "labor organizations" subject to the LMRDA; all others are. The AFGE has stipulated that it "represents" private sector employees as well as government employees. This limited stipulation, however, does not make clear whether the AFGE deals with private sector employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms and conditions of employment. Thus, because we are uncertain whether jurisdiction over this dispute lies in the federal courts, we remand for further proceedings not inconsistent with this opinion.

I

Ramiro M. Martinez is a federal employee who works at the Kelly Air Force Base in San Antonio. The American Federation of Government Employees, Local 1617 ("Local 1617"), is the exclusive bargaining representative for the civilian employees working at the Kelly Air Force Base. Martinez is a member of the AFGE and Local 1617. All of

Local 1617's members are federal employees. Local 1617 is chartered by its parent, the American Federation of Government Employees ("AFGE"). The AFGE is comprised of over a thousand local labor unions and represents almost 700,000 government employees. The parties stipulated that some of the AFGE's local unions "represent" both private and public sector employees.

In July of 1986 and again in February of 1989, the members of Local 1617 elected Martinez president. On January 3, 1989, AFGE National Vice President Glen J. Peterson ordered an investigation of Martinez to determine whether he had violated the AFGE's national constitution by selling a list of Local 1617's members' names and addresses to an insurance company. On March 28, John Sturdivant, AFGE's national president, found there was probable cause to believe that Martinez had sold the membership list. Believing that Local 1617 could not conduct a fair and impartial trial on the charges, Sturdivant appointed a trial committee composed of the presidents of three other AFGE locals. The trial committee, which Martinez contends was biased against him, concluded that Martinez had violated the union constitution and recommended that Sturdivant remove him from his office as president and bar him from holding any union office for three years. On August 24, Sturdivant accepted the trial committee's findings and recommendations and immediately removed Martinez from office.

In February, approximately the same time the AFGE was investigating Martinez, Local 1617 held its regularly scheduled election and Martinez was re-elected. Several unsuccessful candidates challenged the election, alleging that the union gave incumbents greater access to Local

1617's newspaper. After Local 1617's election committee dismissed the protests, two candidates filed appeals to National Vice President Peterson, who ordered an investigation of the election. Finding that incumbent union officers used union funds to enhance their campaigns, Peterson ordered a new election. Martinez appealed the decision to Sturdivant.

When Sturdivant denied his appeal, Martinez and the other Local 1617 officers filed a complaint with the Department of Labor, challenging the decision to overturn the February election. They alleged that the decision violated the right of Local 1617's membership to elect their officers. They further alleged that the decision was arbitrary, capricious, and politically motivated. After conducting its own investigation, the Department of Labor dismissed the complaint.

II

Martinez then brought this action on September 7, 1989, in the United States District Court, Western District of Texas, at San Antonio. Martinez sued under the provisions of the Labor-Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 401, *et seq.* The complaint named the AFGE, some of its national officers, and some officers of other AFGE local unions as defendants. He alleged that the AFGE and its officers violated his rights under the LMRDA by removing him from office, by barring him from office for three years, and by invalidating the February union election in which he had been re-elected president.

On October 3, the AFGE and its officers filed a motion to dismiss or in the alternative for summary judgment. They argued that the court lacked subject matter jurisdiction because Martinez's claims were subject to the exclusive remedial scheme provided by Title VII of the Civil Service Reform Act ("CSRA") of 1978. 5 U.S.C. § 7101, *et seq.*[1] The Acting Assistant Secretary of Labor for Labor-Management standards, who administers section 7120 of Title VII of the CSRA, intervened as a defendant. The Assistant Secretary then filed his own motion to dismiss for lack of subject matter jurisdiction.

The district court held that the CSRA applies to the plaintiff's claims. Concluding that the CSRA's comprehensive statutory scheme precludes judicial review of Martinez's claim under the LMRDA, the district court granted the motions to dismiss.[2] Martinez appeals.

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[1] Both the CSRA and the LMRDA grant certain similar rights to union members. The CSRA, however, applies only to federal employees who are union members. Unlike the LMRDA, the CSRA does not grant union members the right to sue their unions in federal court. Instead, federal employees who are union members must bring their grievances against their union before the Assistant Secretary of the Department of Labor. The instant case deals with a situation where the two statues overlap because the AFGE admits members who are employed in both the public and the private sector.

[2] In reaching its decision, the district court relied on *Karahalios v. National Federation of Federal Employees*, 489 U.S. 527, 109 S.Ct. 1282, 103 L.Ed.2d 539 (1989). In *Karahalios*, the Court held that the CSRA does not create a private cause of action for federal employees to sue their unions. The Court reminded us that we should be reluctant to provide additional remedies where a statute expressly provides one. *Id.* at 533, 109 S.Ct. at 1286-87. *Karahalios*, however, does not govern the instant

III

The only question before us is whether the LMRDA grants subject matter jurisdiction over Ramiro M. Martinez's claims. If it does, then the district court erred in dismissing the complaint. This question is purely legal and, thus, we review the district court's conclusions *de novo*. *United States v. Harrison*, 918 F.2d 469, 473 (5th Cir.1990).

We thus turn to the LMRDA and examine whether Martinez's claim finds a jurisdictional home. Section 412 of the LMRDA provides that:

> [a]ny person whose rights are secured by the provision of this subchapter have been infringed by any violation of the subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate.

29 U.S.C. § 412. Thus, Martinez as a "person," can bring an action against his union under section 412 if he has rights secured by the LMRDA that have been violated. The LMRDA grants certain rights "to every member of a labor organization." 29 U.S.C. § 411. It is undisputed that, in substance, Martinez asserts rights protected under the LMRDA. Those rights include the right to vote and otherwise to participate in union affairs. Martinez contends that the AFGE violated these protected rights when it wrongly denied him the right to participate in his union,

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case. Here, the question is not whether the CSRA provides a remedy, but whether the LMRDA provides one.

including the right to hold office.[3] Thus, the only remaining question as to whether Martinez has stated a claim under the LMRDA that would give us subject matter jurisdiction, is whether he is a member of a "labor organization." This inquiry is determinative of jurisdiction here because the rights that Martinez asserts belong only to "every member of a labor organization." 29 U.S.C. § 411.

The LMRDA defines a "labor organization" as:

> [any organization] in which employees participate and which exists for the purpose, in whole or in part, of *dealing with employers* concerning grievances, labor disputes, wages, rates of pay, hours, or other terms and conditions of employment. (Emphasis added.)

29 U.S.C. § 402(i). Thus, the question is whether the AFGE meets this definition: does it deal with employers concerning the terms and conditions of employment? "Employer" is defined under the LMRDA as any employer except "the United States or any corporation wholly owned by the government of the United States or any state or political subdivision thereof." 29 U.S.C. § 402(e). We, therefore, ask whether the AFGE or any of its locals deal with "any employer except the government – federal, state or local?" If it does, federal courts have jurisdiction over Martinez's claims against the AFGE; if

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[3] Despite the AFGE's arguments to the contrary, Martinez's membership in Local 1617, a purely federal union, does not affect his rights under the LMRDA as a member of the AFGE. The national AFGE and its national officers are the defendants in the instant suit, and it is their actions that are the subject of the suit. If Martinez's local union and its officers were the defendants, we would have an entirely different case.

the only employer that the AFGE and its locals deal with is the government, we must affirm the dismissal of the complaint because the AFGE would not be a "labor organization" under the LMRDA.

On the record before us, the answer to this question is unclear. The AFGE has stipulated that it represents non-governmental employees. At the same time, the AFGE argues that it has no contracts with private employers and that no private employers recognize the AFGE as the exclusive bargaining agent of its employees. In short, the AFGE contends it is not a labor organization because, although it admits into membership some persons who work in the private sector, it does not deal with their private employers. Unfortunately, except for the somewhat ambiguous stipulation, the record is bare on the essential question of jurisdiction. This court has a duty to determine whether it has jurisdiction over any case before it. *Morales v. Pan American Life Ins. Co.*, 914 F.2d 83, 85 (5th Cir.1990). We, therefore, must remand for further factual findings in order to determine whether we have jurisdiction. If the district court finds that the AFGE, through any of its locals, deals with any private sector employers on behalf of its members concerning the terms and conditions of employment, then the district court has jurisdiction and Martinez must have an opportunity to litigate his claims in federal court. Otherwise, the district court must dismiss the proceeding.[4]

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[4] *See Berardi v. Swanson Memorial Lodge No. 48*, 920 F.2d 198 (3d Cir.1990). Here, a government employee sued his union. The union admitted some honorary members, but it was unclear whether the union dealt with their employers. The court

Before concluding, we pause to note the limited nature of our decision. A federal employee can only bring suit in federal court under the LMRDA when his dispute is with his union and happens to deal with private employers concerning the terms and conditions of employment. This decision today merely ensures that all members of the same national union have the same rights vis-a-vis their national union.

IV

For all of the reasons above, we REVERSE the judgment of the district court and REMAND for further proceedings not inconsistent with this opinion.

REVERSED and REMANDED.

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remanded for further factual findings. *See also Hester v. Intern. Union of Operating Engineers*, 818 F.2d 1537 (11th Cir.1987).

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Case No. SA 89 CA 1225

RAMIRO M. MARTINEZ,

Plaintiff,

v.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, *et al.*,

Defendants.

[Filed Mar. 29, 1991]

ORDER

The question before the Court is whether the Court has subject matter jurisdiction over Plaintiff's Complaint. Because the Court concludes that the Civil Service Reform Act establishes the exclusive statutory remedy for Plaintiff's claims, this Court lacks subject matter jurisdiction over Plaintiff's Complaint. Accordingly, the Plaintiff's Complaint is DISMISSED.

A. BACKGROUND

On January 3, 1989, Mr. Glen Peterson, National Vice President of the American Federation of Government Employees (AFGE) District 10, requested an investigation

of the charge that Plaintiff, who was then President of Local 1617,[1] sold a list of members' names and addresses to the Benefit Trust Life Insurance Company for $500.00. On June 22, 1989, a hearing was held on this charge. On July 10, 1989, the trial committee concluded that Plaintiff was compensated by the insurance company and that Plaintiff did not act in a responsible manner. On August 24, 1989, based upon those findings, John Sturdivant, National President of AFGE, removed Plaintiff from office and barred him from holding office for three years.

In the interim, on February 8, 1989, Local 1617 held an election of officers and Plaintiff won re-election as President of Local 1617. Thereafter, other candidates for office protested the 1989 elections, alleging that certain candidates had access to the Local's newpaper, while other candidates were denied that opportunity. The National Vice President reversed the election and ordered a new election. On June 27, 1989, Plaintiff appealed this decision to the National President. The National President denied the appeal on the ground that the Local's newspaper had been used to promote the candidacy of certain officers.

On August 25, 1989, Plaintiff filed a complaint with the Department of Labor, alleging that Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. § 401, *et seq.* had been violated. Plaintiff asserted that the National Vice President's order that a remedial election be conducted was politically

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[1] AFGE Local 1617 represents federal employees at Kelly Air Force Base in San Antonio, Texas.

motivated. The Director of the Office of Elections, Trusteeship and International Union Audits (Director) within the Office of the Assistant Secretary, caused an investigation of the complaint to be conducted.

The Director's investigation established that the National Vice President's decision was consistent with the intent of the LMRDA. On November 27, 1989, the Director dismissed the complaint. On December 6, 1989, Plaintiff appealed the dismissal to the Assistant Secretary for Labor-Management Standards. On April 24, 1990, the Assistant Secretary affirmed the dismissal and upheld the AFGE's decision to overturn election.

In September 1989, Plaintiff filed this lawsuit, challenging his removal and suspension from office and the conduct of the remedial election. Plaintiff invoked the LMRDA as the mechanism for remedying the alleged violations. Defendants asserted that Plaintiff's reliance on the LMRDA was misplaced and asserted that the CSRA is the exclusive authority for resolving the dispute. Defendant-Intervenor also asserted that the CSRA governs this matter.

B. THE CSRA APPLIES TO PLAINTIFF'S CLAIMS

Plaintiff's dispute arises from his removal as President of Local 1617 and the remedial election of Local 1617 officers.

Title VII of the Federal Labor-Management Relations Statute is the controlling authority for resolving issues involving labor relations in the public sector. *Karahalios v. National Federation of Federal Employees, Local 1263,*

___ U.S. ___, 109 S. Ct. 1282, 1285 (1989). The statute establishes that

> [i]t is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

5 U.S.C. § 7101(b). Thus, the Court must ascertain whether Plaintiff is an employee of the Federal Government and whether his claim involves rights and obligations covered by the statute.

The statute defines "employee" as an "individual employed in an agency." 5 U.S.C. § 7103(a)(2)(A). The term "agency" includes an "executive agency." 5 U.S.C. § 7103(a)(3). The term "executive agency" incorporates the Department of Defense. 5 U.S.C. § 101. Plaintiff has been employed by the Department of the Air Force at Kelly Air Force Base in San Antonio, Texas since 1954. As an "individual employed in an agency," Plaintiff is an "employee" of the Federal Government. 5 U.S.C. § 7103(a)(2).

The next issue is whether Plaintiff's Complaint involves rights and obligations covered by the statute. Plaintiff alleges impropriety in his removal and suspension from office and the AFGE's handling of the protests lodged against his re-election as president. The relevant statutory provision mandates that "an agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic

democratic principles." 5 U.S.C. § 7120(a). Such a labor organization must be

> subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for –
>
> (1) the maintenance of democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings. . . .

5 U.S.C. § 7120(a).

Under the CSRA, " 'labor organization' means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, ... " 5 U.S.C. § 7103(a)(4). Both the AFGE and Local 1617 are composed in whole or in part of federal employees and have as a purpose the dealing with federal agencies concerning grievances and conditions of employment. Therefore, because both the AFGE and Local 1617 are labor organizations, they are subject to the statute.

The next issue is whether Plaintiff's allegations state a claim under the statute. In his Complaint, Plaintiff

complains of unfairness in the proceedings that resulted in his removal and suspension from union office. If true, this assertion would state a violation of the "fair process in disciplinary proceedings." 5 U.S.C. § 7120(a). Plaintiff also alleges impropriety in the reversal of the February 8, 1989 election. The CSRA mandates "periodic elections to be conducted subject to recognized safeguards." 5 U.S.C. § 7120(a). Thus, the Court finds that Plaintiff's claims are covered by 5 U.S.C. § 7120.

C. THE CSRA CONTAINS THE EXCLUSIVE REMEDY FOR PLAINTIFF'S CLAIMS

The Court, finding that the CSRA applies to Plaintiff's claims, is compelled to dismiss Plaintiff's Complaint as the CSRA's comprehensive statutory scheme precludes judicial review of the Plaintiff's claims. *Karahalios v. National Federation of Federal Employees, Local 1263*, 109 S. Ct. 1282, 1286 (1989).

IT IS SO ORDERED.

Signed this 29 day of March 1991.

/s/ Emilio M. Garza
EMILIO M. GARZA
United States District Judge